PATTERNS OF POWER

A statement of method

THE GRANT *AND* THE SWORD

How conquerors solve the problem their own soldiers create; why the instrument became law and the currency became property; and what happens when a relation between people is converted into a thing

THE SETTLEMENT

Thomas J. Bryan

with Claude (Anthropic)

Held as tested, not revealed.

PATTERNS OF POWER · A STATEMENT OF METHOD

THE GRANT AND THE SWORD

> *How conquerors solve the problem their own soldiers create; why the instrument became law and the currency became property; and what happens when a relation between people is converted into a thing*

Written in the Patterns of Power series · Thomas J. Bryan with Claude (Anthropic) · held as tested, not revealed

This paper stands alone. It assumes you have read nothing else in the series and know none of the scholars it leans on; where it borrows an idea, it stops and explains the idea in ordinary words before using it. It is about one narrow thing, examined closely: the moment after a conquest when the conqueror has to decide who gets what, and the strange fact that the most successful conquerors of the modern era chose to do this by writing property law.

The argument in one paragraph. A conquest is carried out by armed men who must be persuaded to cooperate, and the same men who make the conquest possible are the first people capable of taking it away from whoever leads it. Every durable order has therefore had to solve the problem of binding its own coordinating class. The medieval European answer was to grant land in return for military service, which worked and carried a fatal defect: the men so bound kept their weapons, and repeatedly used them on each other and on the king. The modern colonial answer, run by Britain and France across three continents, was structurally the same move with a single deletion — grant the land, take the weapons — and it was accomplished not by the sword directly but through statute, decree, treaty and title deed. This required converting things that were not property into property, which in turn required a set of legal fictions, of which there are three principal kinds. The paper names them, shows each at work in a documented case, and argues that what all three actually accomplish is the conversion of a *relation between persons* into a *thing that can be transferred* — and that the transfer, once made, re-sources the recipient's title, so that a man who formerly held his land from his own people now holds it from the conqueror. That re-sourcing is the whole mechanism. Everything else is drafting.

1 · The problem armed men create

Begin where every order begins, and refuse to look away from it. A conquest is not performed by an individual. It requires a body of men willing to kill on command, organised well enough to arrive in the same place at the same time, and equipped by someone. Whoever leads such a body has, at the moment of victory, two problems and not one.

The first problem is the conquered, and it is the easier of the two. A defeated and disarmed population, unable to disperse and unable to coordinate, can be held down by a fraction of the force that beat it. This is a solved problem in the sense that the same combination of measures works nearly everywhere it is patiently applied.

The second problem has no general solution, and almost all the interesting variation between orders lives in the answers people have tried. The conqueror's own coalition — the men who commanded the wings, supplied the horses, held the coast, brought their retainers — are now, by the identical qualities that made them useful, the only people in the territory capable of doing to him what he has just done to somebody else. They are armed, they are organised, they have followings, and they have just watched a demonstration of how a state changes hands. A leader who does not bind them will be killed by one of them, usually within a generation and often within a year.

So the question that organises the founding of every order is not *how do I hold the conquered* but *how do I hold the men who helped me*. And the answer, in nearly every recorded case, has the same shape: **give each of them something they will lose if the arrangement falls.** Not a promise, not an oath alone, but a holding — an estate, an office, a revenue, a monopoly — whose continued enjoyment depends on the arrangement's survival, so that each man, in defending what is now his own, defends the whole without being instructed to and without needing to like anybody.

This is worth stating carefully because it is the least intuitive part of the machine. Such an arrangement does not require conspiracy, loyalty, ideology or friendship. It requires only that the incentives point the same way. Men who despise each other will hold a settlement together for decades if each one's holdings depend on it, and men who genuinely love one another will tear one apart in a season if the holdings do not. When you are reading a founding, do not look for the oaths. Look for the schedule of who received what, and ask of each recipient a single question: *if this arrangement collapsed tomorrow, would this man be*

better or worse off? The answer to that question, repeated down the whole hierarchy, is the real constitution.

2 · The feudal answer, and the defect in it

The clearest historical version of this arrangement — clear because it was written down in explicit terms and because it lasted long enough to fail visibly — is the tenurial system of medieval Europe, and it is worth reconstructing plainly rather than through the word "feudalism," which has been argued about so long that it now obscures more than it reveals.

The bare mechanism was this. The king was held, in law and in theory, to be the ultimate holder of all land in the kingdom. He did not farm it or occupy it; he *granted* it, in large parcels, to a small number of great men. What the great man received was not ownership in the modern sense but a **tenancy** — he held the land *of* the king. And what he owed in return was specified, and the specification is the point: he owed **service**, and the service was military. He was required, when summoned, to appear with a stated number of armed and mounted men, equipped and provisioned, for a stated number of days. Those armed men are conventionally called knights, a word that has acquired several centuries of romance; strip the romance away and a knight is a man whose profession is killing on horseback and whose living is provided by a grant of land made on condition that he do so when called. The great man, in turn, granted portions of his holding to lesser men on the same terms, and so on down. The French historian Marc Bloch, whose *Feudal Society* remains the standard account, described the resulting structure as a chain of personal dependencies running from the top of the society to the bottom, in which the tie was between persons rather than between a citizen and a state.

Two features of that arrangement matter here.

The first is that it solved the coordination problem exactly as described in §1. Every holder of land had a direct, personal, heritable interest in the survival of the arrangement that granted it, because if the arrangement fell his title fell with it. He needed no instruction to defend the whole; defending his own estate *was* defending the whole. And a story was laid over the arrangement to make it cheaper still — the anointing of kings, the sacral character of the crown, the doctrine that the order of ranks reflected an order in heaven — which converted a truce among armed men into something a person could believe in and did.

The second feature is the defect, and it is fatal in a specific way. **The men bound by this arrangement were bound by giving them land, and the land was given precisely so that**

they would maintain armed followings. The military capacity was not an unfortunate side effect of the settlement; it was the consideration, the thing being purchased. The king's army *was* the sum of his nobles' retinues, which meant that the king's army was, at any moment, potentially the army that removed the king. The entire political history of medieval and early modern Europe — the baronial revolts, the overmighty subject, the dynastic civil wars, the long English crisis conventionally called the Wars of the Roses — is the working-out of that defect. A settlement that binds men by arming them has purchased its stability with a permanent, structural civil-war risk, and the risk comes due on a schedule nobody controls.

Hold that defect in mind. It is what the next arrangement was built to remove.

3 · The colonial answer: the same grant, with the service deleted

Now move forward and outward, to the British and French conquests of the nineteenth and twentieth centuries, and look at what a conqueror did on the day after the shooting stopped.

He faced the same two problems. The conquered were the easier one. The harder one was a coordinating class — and here the class in question was frequently not the conqueror's own officers but the *conquered order's* elite: the chiefs, shaykhs, emirs, notables and clan-heads who already commanded followings, already collected what was collectable, and already knew where everything was. A conqueror who could bind those men would rule enormous territories with a handful of his own people. A conqueror who could not would have to garrison every district forever.

So he bound them, in the way §1 predicts, by giving each of them something to lose. But observe closely *what* he gave, and what he conspicuously did not ask for in return.

In **Buganda**, the kingdom on the northern shore of Lake Victoria that became the core of British Uganda, the instrument was the Uganda Agreement of 1900. Before it, Ganda land was not owned in anything like the European sense. It was held as a web of office and clientage: the Kabaka, the king, was the head of all clan-heads, and land was allotted to chiefs as the estate of an *office*, held by clans under their clan-heads, and worked by peasants who drew use-rights from whoever stood above them. It was revocable, relational, and political — the king bound men to himself precisely by granting and withdrawing the use of soil. Article 15 of the Agreement dissolved that web and replaced it with a surveyor's grid, dividing the kingdom into private freehold estates measured in English square miles — so literally that the Luganda word coined for the new tenure, *mailo*, is the English word "mile" naturalised

into the language. A thousand chiefs received eight square miles each. And the Agreement described this as granting them "the estates of which they are already in possession."

They had not been in possession. Private freehold in land was not a Ganda institution and had never existed there. The Agreement manufactured the possession and then recognised what it had manufactured — which converted a service nobility, men who held land because they held office at the king's pleasure, into a landed gentry holding heritable, alienable estates in perpetuity.

Now ask the feudal question: what service was required in return? None of the kind Bloch describes. Article 9 made the county chief "immediately responsible to Her Majesty's representative" for the collection of taxes, and provided that on failure "Her Majesty's representative shall have the right to call upon the Kabaka to dismiss him." The chief owed **tax collection and political compliance**. He owed no knights, no retinue, no armed following — and the same order that enriched him had already subordinated the kingdom's military capacity to itself.

The pattern repeats with variations that are worth noting.

In **Northern Nigeria**, Frederick Lugard, having destroyed the army of the Sokoto Caliphate at Burmi and Sokoto in 1903 with Maxim guns, stood in the conquered capital six days later and told the assembled Sultan-elect and elders exactly what was being kept and what taken. The emirs would keep their offices; the Islamic courts would continue to determine the personal status of Muslims; the government would not interfere with the religion. What the government took was "the right to depose kings and to create kings," the land rights, the minerals, the sole right to tax traders, and the currency. Read that division precisely: the emirs retained the *robe* — the sacred and legal authority that made their populations obey them — and lost the *floor*, the capacity for organised violence, and the *purse*. They were left with everything that made them useful and nothing that made them dangerous.

In **Transjordan** — the desert emirate east of the Jordan that became modern Jordan — the same technology arrived as a cadastral survey. From 1927 a land settlement ran into every village, converting collective tenure into registered individual title. Its principal beneficiary among the tribal aristocracy, Mithqal al-Fayez of the Bani Sakhr, emerged as the largest landowner in the country, with a general's rank and tax exemption. And in exactly the same years, a British-officered force called the Arab Legion established a monopoly of organised violence across the steppe, so that the raid — the *ghazu*, the organising military institution of Bedouin life and the basis of a shaykh's power — ceased. The last raid into Transjordan is

dated to 1932. Al-Fayez was made rich in the same decade, and by the same government, that made him militarily irrelevant.

In **Iraq**, the tribal shaykhs of the Tigris and Euphrates were converted by title registration from war-leaders commanding armed sections into landlords collecting rent from cultivators legally bound to them by debt.

Set the four cases beside the medieval arrangement and the structure is identical but for one clause. Land is granted. The grant creates a personal, heritable, defensible interest in the arrangement's survival. Each recipient defends the whole by defending his own. The difference — the entire difference — is that the medieval grant *purchased armed service* and the colonial grant *purchased political compliance*, and the colonial grantee was systematically stripped of the capacity the medieval grantee was paid to maintain.

This is the move the whole paper exists to name. The colonial settlement pays a warlord to stop being a warlord. It converts a capacity for violence into a possession, and it does so because a possession can be taken away by a court, while a retinue can only be taken away by a war. The state that emerges is more stable at the elite level than any feudal monarchy ever managed to be, and it is more stable for a reason that has nothing to do with virtue or civilisation: it worked out that granting land to armed men creates rivals, and it therefore granted land and took the arms.

That is what it means to say that a state stands **above warlordism**. Not that it has abolished the warlord — it has hired him, paid him in title deeds, and disarmed him with the same instrument.

4 · Why the instrument became law

A reasonable objection arrives here. If the conqueror has the guns, why does he bother with statutes at all? Why not simply take the land and hand it out, as conquerors had done for four thousand years?

The answer is the most important thing in this paper, and it is not what a cynical reading would predict. The conqueror writes law because **his own people believe in law**, and their belief is a genuine constraint on him rather than a decoration.

The French case states it almost explicitly. When France set about transferring Algerian land to European hands after 1830, it faced a population of some three million who worked that land and were not going anywhere — and it faced something else. France had bound

itself, in the terms of the 1830 capitulation and more bindingly in its own republican self-image, to respect property and to rule by the Code. A regime whose entire claim to legitimacy at home rested on the proposition that it governed by universal civil law could not simply announce that it was seizing three million people's fields, because the announcement would have been heard not principally by Algerians but by Frenchmen — by the deputies who voted the budgets, the taxpayers who funded the army, and the conscripts who filled it. Their conviction that France was a country of laws was the cheap foundation on which the expensive apparatus of conquest rested, and that conviction had to be kept intact.

So the seizure was laundered through legislation. Not disguised — laundered, which is different, because the statutes did real legal work and were argued over in good faith by men who believed in them. The German sociologist Max Weber, writing at the turn of the twentieth century, distinguished several grounds on which people accept authority as rightful; one of them he called **legal-rational**, meaning authority accepted because it flows from impersonal rules correctly applied, rather than from an inspired person or from immemorial custom. Weber's point, and it is the operative one here, is that a monopoly of force which is merely feared is expensive and brittle, while a monopoly of force believed to be rightful is cheap, because the population enforces it on itself. A nineteenth-century European state ran on legal-rational legitimacy. Its soldiers and its voters believed that what was lawful was legitimate. That belief was worth more to the state than any province — and it meant that every province had to be acquired in a form the belief could accept.

Law is therefore not a veil thrown over the conquest by men who knew better. It is the *shape the conquest had to take* in order to remain fundable and manned. And this explains a feature of these instruments that otherwise looks like mere hypocrisy: they are frequently more elaborate, more scrupulous, and more genuinely constraining than a simple seizure would have needed to be. The elaboration is the measure of the constraint.

The English historian E. P. Thompson made the decisive observation about this in a study of an eighteenth-century English statute, and it is worth stating because it prevents the entire analysis from collapsing into cynicism. Thompson was examining a law used savagely against the rural poor, and he expected to conclude that law was simply a class instrument. What he concluded instead was that law cannot function as legitimation unless it *actually delivers justice a great deal of the time* — that the powerful are, in real cases, held to their own rules, and that this is the price of the rules being believed. The mask must fit, and a mask that fits is doing some of the work of a face. This is why colonial legal instruments so often contain genuine protections, why officials sometimes lost cases against natives, and

why some of the men who administered these systems were personally scrupulous and are recorded resigning over breaches. None of that is evidence against the analysis. It is the mechanism working as designed.

There is a second reason law is the superior instrument, and it belongs to the drafting rather than the politics. **A decree presents itself as a decision; a law presents itself as a discovery.** When an official states that certain land is Crown land, or that certain men are already in possession of estates, he is not proposing a change — he is, grammatically, reporting a fact. The verb tense does the work. A statute that says "shall be deemed" has performed a seizure in the voice of a clerk correcting a filing error, and the man reading it in London experiences it as administration rather than as conquest.

The tell, in these documents, is where the drafting stops pretending. The Uganda Agreement of 1900, having disposed of a kingdom's land and sovereignty, closes with Article 22: *"In the interpretation of this Agreement the English text shall be the version which is binding on both parties."* Twenty-eight years later and a continent away, the Anglo-Transjordanian Agreement of 1928 ends with the same provision — where the Arabic and English diverge, *the English text shall prevail*. Two treaties, two continents, one clause: a disposition of a country made binding in the one language the disposed could not read. When you are looking for the fiction in a legal instrument, look for the clause that decides which version is real.

5 · The three fictions

Property law was the currency, but the conqueror's situations differed, and the fiction had to be cut to the job. There are three principal kinds in the record, and distinguishing them is more useful than the general observation that colonial law was fictional, because *which* fiction a conqueror reaches for tells you what he actually wanted.

The first fiction is vacancy: declare the land empty. This is the instrument of dispossession, and it is used where the conqueror wants the ground itself because he has settlers of his own to seat on it. Its philosophical warrant is usually traced to John Locke, the English philosopher whose *Second Treatise of Government* (1689) argued that property arises when a man mixes his labour with unowned nature — from which it follows, or was widely taken to follow, that land not enclosed, tilled and improved in the recognised manner remains unowned and is available to whoever will improve it. Applied to a continent occupied by pastoralists or shifting cultivators, this argument does very heavy lifting: it can

declare an inhabited country legally vacant without anyone having to lie about whether people are living there.

The British Kenyan settlement is the clean case. Successive Crown Lands Ordinances made European freeholds available, extended settler leases in 1915 from ninety-nine years to nine hundred and ninety-nine, and — in the same 1915 measure — redefined Crown land to *include land actually occupied by Africans*, who were left with temporary occupation licences of one year and five acres. Note the extravagance of the 999-year lease. A term of that length is not a commercial calculation; it is a statement, and what it measures is the size of the reality being overwritten. The Kikuyu tenure it displaced, *githaka*, was lineage land, held by descent groups and inalienable — that is, land that by its own logic could never be sold at all. The longer the lease, the deeper the thing beneath it.

The second fiction is recognition: declare that the grantee already owned it. This is the instrument of *binding*, and it is used where the conqueror wants the man rather than the ground. It is the exact inverse of the first: instead of declaring occupied land empty, it declares un-owned land long-owned. Buganda's "the estates of which they are already in possession" is the purest example in the record, but the same move runs through the Northern Nigerian confirmation of the emirs in their offices and through the Transjordanian land settlement's registration of shaykhly holdings.

Why the inversion? Because the two fictions do opposite jobs. Vacancy takes; recognition gives. And recognition has a property that vacancy lacks and that the conqueror badly needs: a grant dressed as a confirmation does not look like a gift, and a man who does not think he has been given something does not think he can be deprived of it — until he is, at which point he discovers the source of his title and behaves accordingly.

The third fiction is divisibility: declare that a collective holding can be divided into individual shares. This is the subtlest of the three and, in raw human consequence, probably the largest. It is used where the conqueror wants the land, has settlers to seat, and *cannot* use the vacancy fiction because the country is manifestly full of people who have manifestly been farming it for centuries.

Algeria is the case. Pre-conquest Algerian land was held largely as *arch* — collective tribal land, inalienable, redistributed periodically among households, reverting to the group if left unworked — alongside private *melk*, religious endowment (*habous*), and the lands of the departed Turkish state. The obstacle this presented to a settler colony was not military and not moral; it was technical, and the module that reconstructs it puts the point exactly: *the land existed; the willing sellers did not; and manufacturing them was a legislative task.* You

cannot buy a tribe's collective, redistributed, inalienable patrimony, because no individual owns a saleable parcel of it and therefore no individual can sign.

The manufacture was accomplished by a cascade of statutes, of which two matter most. The *sénatus-consulte* of 22 April 1863 divided tribal territory into administrative units, sorted the land into individual and collective portions, and began converting inalienable *arch* into private, surveyable, saleable parcels — creating, for the first time, an individual Muslim proprietor who *could* sell. It was presented in Paris, and is still read by part of the historiography, as a protective measure recognising tribal ownership; and it did recognise tribal ownership, in the same motion by which it dissolved the collective form that had made that ownership unsaleable. The settlers understood it perfectly and complained only that it had not gone far enough. They got their completion in the *loi Warnier* of 26 July 1873, which applied French property law wholesale to Algerian land and removed the remaining protections, so that a sale could no longer be blocked by the objection that the land was collectively owned.

Read those two statutes as a machine and their function is unmistakable: not to take land, which would have required an admission, but to **change what land was**, so that it could subsequently be bought by ordinary voluntary transactions that no metropolitan conscience need object to. Dispossession by contract, achieved by legislating the contract into possibility. And the double face is perfect — to Paris, the extension of French civil law and individual right to a shore held back by collective backwardness; on the ground, the legal apparatus of mass expropriation.

A fourth situation deserves a note because it shows that these choices were *calibrated* rather than ideological. French Vietnam ran two different settlements in one country, and the variable that selected between them was the depth of the order underneath. In the Mekong delta of the south — a frontier settled only in the previous century, where the ancient self-running Vietnamese commune had the shallowest hold — France annexed outright, drained and canalised on a vast scale, and distributed the reclaimed land through auctions favouring wealthy bidders and grants to collaborators and speculators, manufacturing a landlord class where none had existed and producing one of the most extreme land concentrations in Asia. In the ancient villages of the north and centre, where the communal order was deep and the saying held that the king's law yields to the village's custom, France left the villages largely intact and ruled through the retained emperor and his mandarins. Same conqueror, same people, opposite methods — because breaking a thin order is cheap and breaking a thick one is not.

6 · What the fictions actually do

Underneath all three fictions is a single operation, and naming it is the point of the paper.

Consider what these instruments found. Ganda land held as the estate of an office, granted and revoked by a king. Kikuyu *githaka*, held by a descent group and inalienable. Algerian *arch*, held by a tribe, redistributed among its households, revertible if unworked. Bedouin grazing ranges held by a confederation. Vietnamese communal fields administered by a village council.

None of these is a *thing*. Every one of them is a **relation between people** — a man's standing with his king, his lineage, his tribe, his village — that happens to be expressed in access to soil. That is why none of them could be sold. There was nothing to hand over. To sell your office-land would be to sell your office; to sell your clan's land would be to sell your position in your clan; and neither transaction has any meaning, in the way that selling your seat at your own family's table has no meaning.

What every one of these legal instruments does is convert a relation into a thing. Office becomes estate. Clan right becomes parcel. Collective patrimony becomes share. Occupation becomes — by the vacancy fiction — nothing at all. And the reason this conversion is performed is that a relation cannot be transferred and a thing can.

The Hungarian economic historian Karl Polanyi, writing in 1944, gave this operation its most useful general name. Polanyi observed that land, labour and money are treated by market societies as commodities — as things produced for sale — when in fact none of them is. Land is not produced at all; it is, in his phrase, another name for nature, and human beings' relation to it is bound up with kinship, neighbourhood, craft and creed. Treating it as a commodity is therefore a **fiction**: a useful, powerful, world-making fiction, but one whose imposition on a society that did not previously hold land that way is not a technical reform but a social revolution. Polanyi was describing the enclosure of the English commons and the making of the English market economy. The colonial land laws are the same operation, performed on a compressed timetable, by an outside power, on people who had no vote in it.

Now the second half of the operation, which is where the paper began. Once the relation has been made a thing, and the thing has been granted, **the grantee's title has been re-sourced.**

This is the mechanism and it is easy to miss because nothing visible changes. The chief holds the same fields he held last year and lives in the same place among the same people. But before the instrument, his claim to that ground came *from below and beside him* — from his king, his lineage, his tribe, his standing in a world of obligations that made him what he was. After the instrument, his claim comes *from the conqueror*: from a register, a survey number, a schedule in an agreement, a court that will enforce it and a government that maintains the court. Same man, same land, different source.

And the source is the loyalty. He will defend the arrangement not because he has been bought in any crude sense, and not because he approves of the conquerors, but because the arrangement is now the thing that makes his holdings his. If it falls, his title falls with it, and he knows precisely who his fields would revert to. He needs no instruction. This is why these settlements are so often held for generations by men whose private correspondence shows them resenting the whole business — and why, in Transjordan, the state's greatest landowner could take money from the Zionist movement and back the Palestinian revolt while remaining, structurally, the arrangement's most reliable pillar. The default does not require agreement. It requires only that defection cost more than compliance.

This is also, exactly, what the medieval enfeoffment did. The noble held his land *of* the king; his title was sourced in the crown; and that sourcing was the tie. The colonial instrument performs the identical re-sourcing and then declines to ask for the swords. The English lawyer and colonial administrator Henry Maine, writing in 1861, famously described the movement of progressive societies as a movement *from status to contract* — from a world in which a person's rights flowed from his position in a family or a caste to one in which they flowed from agreements he had entered. Maine, who served on the Viceroy's Council in India, meant it as a description of organic historical development. Read these statutes and it is nothing of the kind. The movement from status to contract was, in the colonies, an administrative programme, carried out by legislation, at speed, on populations who had not requested it — and the reason it was carried out is that a person whose rights flow from status cannot alienate them, and a person whose rights flow from contract can.

7 · The counter-case: what happens when nobody is bought

A structural claim is worth little without a case where the mechanism is absent, so that its absence can be priced. The collection contains one, and it is the sharpest available.

In Kenya, Britain met an order that presented no obvious apex to co-opt. The Kikuyu had no king, no emirs, no assessed tax, no aristocracy — authority was distributed across lineage elders, age-sets and graded councils, which is a perfectly effective way to run a society and an extremely inconvenient one to conquer, because there is nobody to hand the country over. And because the object in Kenya was to seat European farmers on the highlands, there was no incentive to manufacture an indigenous propertied class either. So Britain used the vacancy fiction, took the land, forged chiefs where none had existed to serve as administrative agents, and bought in no native elite at all.

The bill arrived. An order that has enfeoffed a slice of the conquered elite has purchased intermediaries who police the arrangement for their own reasons and at their own expense. An order that has enfeoffed nobody must do all the policing itself, forever, from outside — and Kenya's costs are the pass laws, the reserves, the counter-gangs, the Emergency declared in 1952, and the detention camps. Compare Northern Nigeria, where the same empire, having stepped into an existing structure of emirs and confirmed them in their offices, governed millions with roughly one political officer to every hundred thousand subjects, and went sixty years without a rising.

The lesson is not that the Nigerian settlement was kind. It is that **the enfeoffment is a purchase, and a conqueror who declines to make it pays the price in coercion instead** — which is more expensive, more visible, and considerably worse for everybody, including the conquered. A settlement that buys an elite is a hinge, swinging part of the conquered order across to the conqueror's side and bolting it there with freehold. A settlement that buys nobody is a wall, and walls have to be manned.

8 · Who the fiction is for

One question remains, and it is the one that most often gets answered wrongly.

Whom is all this legal apparatus meant to persuade? Not, principally, the dispossessed. The Kikuyu on a one-year occupation licence was not going to be argued into consent by a recital of the Crown Lands Ordinance, and did not need to be, because the force already contained him. People who are being cleared are handled by the floor, not by the story.

The apparatus is aimed at the population whose willing belief is the actual foundation of the whole arrangement: **the conqueror's own citizens** — the men who fill the army, the taxpayers who fund it, the electorate that returns the government that issues the titles. Their formed conviction that what is lawful is legitimate is the inexpensive base on which the

expensive machinery of force rests lightly. A soldier who believes he is enforcing law will do for a wage what he would not do for plunder. A voter who believes his country governs by law will fund an administration he would not fund as a protection racket. And neither of them has to be deceived about any particular fact; they need only hold, in general, the belief that lawful means legitimate — a belief which is largely true at home, which is why it transfers so easily and so misleadingly abroad.

This is the source of a phenomenon anyone can observe today, and the modern instance illuminates the historical one. Citizens of a powerful state routinely hold that their own law expresses something like justice as such, and apply that conviction to places where their law was never sovereign — so that a foreign practice is judged not merely different but *wrong*, in a register that borrows the authority of legality without the jurisdiction. That is not stupidity and it is not usually propaganda. It is what happens when a genuine, well-founded, largely-deserved belief in one's own legal order is carried across a border where the order's writ does not run. The colonial version worked the same way. The Frenchman who believed in the Code was not lying when he called the *sénatus-consulte* an extension of civil right; he was applying a real conviction to a case it had been arranged to fit.

That is why the seam between metropole and colony is the central structural fact of these orders — and why the drafting matters so much. The same document must read as progress in one capital and function as expropriation in the other, and the two audiences must never be in the room together.

9 · Why seeing this is not debunking

The paper closes on the discipline, because without it the analysis becomes both cruel and inaccurate.

To see that property is a legal fiction is not to conclude that property is a fraud, that law is a con, or that the belief of the people who held these convictions was contemptible. Three things have to be held at once.

The first: **a fiction that has taken is not a lie.** Once a settlement has run through a few generations of childhood, schooling, court, custom and community, the belief it installs is a genuine conviction, indistinguishable in the believer's mind from any other. The Ganda chief's grandson who defended his *mailo* estate in 1950 was not performing a script; he held land his family had held for half a century, under a law his courts enforced, and he was right to regard it as his in the only sense available to him. That the origin was arranged does not

make the belief false. It makes it a thing that was built and then became real, which is what every durable institution is.

The second: **the fiction is usually delivering.** A settlement that only extracted would not last. The ones that lasted were carrying real freight — an end to raiding, a court that would hear a case, a title that would survive the death of the man who granted it, protection from the next warlord over the hill. In Transjordan the raids stopped and the smallholder kept his plot; in Northern Nigeria sixty years passed without a rising. Those are real goods delivered to real people, and an analysis that cannot say so has stopped being an analysis and become a party.

The third, and it must not cancel the other two: **the arrangement was still a conquest, and the costs fell on people who never agreed to it.** The Buganda peasant paid twice, once in colonial tax and once in rent to the chief the Agreement had just made his landlord. The Algerian tribe lost land it had held collectively for as long as anyone could count, through statutes framed in the language of individual right. The Kikuyu lost the highlands to a fiction of vacancy, and were held off them by force for fifty years. The Vietnamese delta produced four times the rice while the peasant who grew it ate less.

The alternative to settled title is not freedom. It is the warlord's camp, where the only claim to anything is the ability to hold it this morning — and every population that has lived through the collapse of a legal order has discovered how much the fiction was worth. That is precisely why the fiction is so powerful and why it must be read rather than either swallowed or dismissed. **To see the grant behind the title is not to wish the title away. It is only to refuse the law's own claim to have been there before the sword.**

It was not. Somebody arrived with armed men, and afterwards there was a register.

A note on sources. The historical instruments described here are quoted from public-domain texts and are established, with full sourcing, in the case studies from which they are drawn: the Uganda Agreement of 1900 (Articles 9, 15 and 22, including the grant of "the estates of which they are already in possession" and the binding English text); Lugard's address at Sokoto of 21 March 1903; the Anglo-Transjordanian Agreement of 20 February 1928 (the prevailing English text); the Kenyan Crown Lands Ordinances of 1902 and 1915 (European freeholds, the extension of settler leases to 999 years, the redefinition of Crown land to include native-occupied land, and African occupation licences of one year and five acres); the Algerian *sénatus-consulte* of 22 April 1863 and the *loi Warnier* of 26 July 1873; and the French Indochinese concession system. Figures for land concentration in Cochinchina, for Transjordanian and Nigerian administrative ratios, and for the dating of the last Transjordanian raid are given as the underlying studies give them, with contested figures there presented as ranges. Modern scholarship is paraphrased and credited,

not quoted: Marc Bloch, *Feudal Society* (1939–40), for the structure of tenurial dependence; Max Weber on legal-rational authority and the monopoly of legitimate force; John Locke, *Second Treatise of Government* (1689), for the labour theory of property and its colonial application; Henry Maine, *Ancient Law* (1861), for the movement from status to contract; Karl Polanyi, *The Great Transformation* (1944), for land as a fictitious commodity; E. P. Thompson, *Whigs and Hunters* (1975), for the argument that law cannot legitimate unless it genuinely constrains; Mancur Olson on the stationary bandit; Douglass North, John Wallis and Barry Weingast on the rationing of privilege and the shift from personal to impersonal law as a change of technique rather than of kind; and Mahmood Mamdani, *Citizen and Subject* (1996), on the chiefly settlement. Where the record disagrees, the disagreement is given rather than resolved. This paper advances a structural reading and does not claim that the men who drafted these instruments understood them in these terms; several plainly did, and several plainly did not, and the analysis does not depend on which.

Part of the collection Patterns of Power. *Tested, never revealed.*